

ORDER OF DISMISSAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY LYNN COLBERT,)	No. C 11-4063 RMW (PR)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
vs.)	
)	
SUZAN L. HUBBARD,)	
)	
Respondent.)	

On August 19, 2011, petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's motion to proceed in forma pauperis is GRANTED. For the reasons stated below, the instant petition is DISMISSED without prejudice as a second or successive petition pursuant to 28 U.S.C. § 2244(b).

DISCUSSION

A district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the court of appeals authorizing the district court to consider the petition.

Here, the instant petition is not petitioner's first federal habeas petition concerning his

1 1999 conviction from the Santa Clara County Superior Court. Petitioner had filed a previous
2 federal habeas petition, challenging his 1999 conviction and sentence from the Santa Clara
3 County Superior Court, which this court denied on the merits. See Colbert v. Knowles, No. C
4 02-5894 RMW (PR) (N.D. Cal. June 21, 2007). Because both petitions challenged the same
5 1999 conviction and sentence, and petitioner has not presented an order from the Ninth Circuit
6 Court of Appeals authorizing this court to consider any new claims, this court must dismiss the
7 instant petition in its entirety. See 28 U.S.C. § 2244(b)(3)(A).

8 CONCLUSION

9 The instant habeas petition is DISMISSED without prejudice to refiling if petitioner
10 obtains the necessary order. The clerk shall terminate any pending motions and close the file.

11 Petitioner has not shown “that jurists of reason would find it debatable whether the
12 petition states a valid claim of the denial of a constitutional right [or] that jurists of reason would
13 find it debatable whether the district court was correct in its procedural ruling.” Slack v.
14 McDaniel, 529 U.S. 473, 484 (2000). Accordingly, a certificate of appealability is DENIED.

15 IT IS SO ORDERED.

16 DATED: JUDGE


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GREGORY LYNN COLBERT,
Plaintiff,

Case Number: CV11-04063 RMW

CERTIFICATE OF SERVICE

v.

SUZAN L HUBBARD et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 23, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gregory Lynn Colbert
Mule Creek State Prison
Prisoner # P-29153
P.O. Box 3471
Crocoran, CA 93212-3471

Dated: September 23, 2011

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk